

EXHIBIT 1

The Honorable Ronald Kessler

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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MEADOW VALLEY OWNERS
ASSOCIATION, a Washington nonprofit
corporation,

Plaintiff,

v.

MEADOW VALLEY, L.L.C., a Washington
limited liability company; ROGER and JANE
DOE HEBERT, individually and their marital
community; and DOES 1 through 50,

Defendants.

No: 03-2-33931-8 KNT

**PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR:**

- (1) BREACH OF IMPLIED WARRANTY;
- (2) BREACH OF IMPLIED WARRANTY
OF HABITABILITY;
- (3) BREACH OF CONTRACT AND
EXPRESS WARRANTY;
- (4) VIOLATION OF THE UNIFORM
FRAUDULENT TRANSFER ACT;
- (5) MAKING OR ACCEPTING
UNLAWFUL DISTRIBUTIONS;
- (6) BREACH OF FIDUCIARY DUTY;
- (7) VIOLATION OF THE CONSUMER
PROTECTION ACT;
- (8) INJUNCTIVE RELIEF RE:
TURNOVER AND DELIVERY OF
RCW 64.34.312(1) DOCUMENTS AND
FOR DAMAGES; AND
- (9) COLLECTION OF DELINQUENT
CONDOMINIUM ASSESSMENTS

Meadow Valley Owners Association (the "Association") hereby asserts the following
claims:

PLAINTIFF'S FIRST
AMENDED COMPLAINT- 1

Levin & Stein
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 521-8612
Fax (206) 521-8614

& Law Offices of James L. Strichartz
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 282-8020
Fax (206) 282-5041

COPY

PARTIES

1. Pursuant to a Declaration and Covenants, Conditions, Restrictions and Reservations for Meadow Valley Owners Association (the "Declaration"), the Association, a Washington nonprofit corporation, was established under the Washington Condominium Act, RCW 64.34.300, as the association for the Meadow Valley Condominium development. Pursuant to the Declaration, the Association has the duty to maintain, repair, replace and restore all of the common elements and Association property located in and on the condominium development commonly known as Meadow Valley Condominium and located in King County, Washington (the "Project"), and has the duty to repair, replace and restore damage to the Project.

2. Pursuant to RCW 64.34.304(1)(d), the Association has the right to institute litigation "in its own name on behalf of itself or two or more unit owners on matters affecting the condominium." The Association is instituting this action pursuant to that statute, on behalf of itself and all of the unit owners with respect to matters affecting the condominium.

3. Meadow Valley, L.L.C. is a Washington limited liability company doing business and residing in King County, Washington. Meadow Valley, L.L.C. is the named Declarant for the Project.

4. The Association is informed and believes, and on that basis alleges, that Roger Hebert ("Hebert") and Jane Doe Hebert are husband and wife; that at all time relevant hereto, Hebert was a member, officer, director, manager and/or shareholder of Meadow Valley, L.L.C.; and that all acts alleged herein to have been done by Hebert were done on behalf of, and for the benefit their marital community.

5. The true names and capacities of the Defendants named herein as Does 1 through 50, inclusive, are unknown to the Association. The Association will amend this Complaint to insert the correct names and capacities of said Defendants when they have been ascertained.

6. The Association is informed and believes, and on that basis alleges, that Does 1 through 10 are members in Meadow Valley, L.L.C., and/or have an ownership interest in Meadow Valley, LLC and/or the Project. Does 1 through 10 shall be referred to collectively as the

PLAINTIFF'S FIRST
AMENDED COMPLAINT- 2

Levin & Stein
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 521-8612
Fax (206) 521-8614

& Law Offices of James L. Strichartz
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 282-8020
Fax (206) 282-5041

1 "Members"

2 7. The Association is informed and believes, and on that basis alleges, that Does 11
3 through 25 are officers, directors, shareholders and/or members of those Members that are not
4 individuals and control those entities.

5 8. The Association is informed and believes, and on that basis alleges, that at all times
6 relevant hereto Hebert, the Members and Does 11 through 25 acted in concert with Meadow Valley,
7 L.L.C. in executing the Project's Declaration and/or in reserving, succeeding to and/or possessing
8 special declarant rights, making Hebert, the Members and Does 11 through 25 declarants of the
9 Project pursuant to RCW 64.34.020(13) and/or (29) and *One Pac. Towers Homeowners' Ass'n v.*
10 *HAL Real Estate Inv., Inc.*, 148 Wn.2d 319, 61 P.3d 1094, (2002).

11 9. The Association is informed and believes, and on that basis alleges, that Hebert, the
12 Members and/or Does 11-25 are alter egos of Meadow Valley, L.L.C. for each and all of the
13 following reasons:

- 14 1. They have commingled funds and other assets;
- 15 2. They have failed to segregate funds of the allegedly separate entities;
- 16 3. They have transferred funds between themselves with no substantial business
17 justification;
- 18 4. They have allowed the staff and other assets of one or more of them to be
19 used by one or more of the other alter egos without adequately compensating
20 the other alter ego whose staff and other assets have been used;
- 21 5. Each alter ego defendant treated the assets of the other alter ego defendants
22 as its own;
- 23 6. The alter ego corporations failed to maintain proper or adequate corporate
24 records;
- 25 7. The equitable ownership of the alter ego corporations was in the same entity
26 or individual;
8. There was a similarity in the officers, directors and supervising employees of

PLAINTIFF'S FIRST
AMENDED COMPLAINT- 3

Levin & Stein
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 521-8612
Fax (206) 521-8614

& Law Offices of James L. Strichartz
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 282-8020
Fax (206) 282-5041

1 the alter ego corporations;

2 9. Each alter ego entity was not adequately capitalized;

3 10. There is an absence of substantial assets in each alter ego entity;

4 11. The alter ego corporations were shells, instruments or conduits for the
5 conduct of a single venture or business;

6 12. The alter ego defendants failed to maintain arms' length relationships with
7 each other; and

8 13. It would be unjust and inequitable to allow the alter ego Defendants to use
9 their purported separate status as a shield to insulate them from liability for
10 the obligations of the Meadow Valley, L.L.C.

11 10. Hereinafter Meadow Valley, L.L.C., Hebert, the Members and Does 11 through 25
12 shall be referred to collectively as the "Developer Defendants".

13 11. Does 26 through 50 are believed to be contractors and/or subcontractors that
14 supplied, installed and/or constructed portions of the Project.

15 **JURISDICTION AND VENUE**

16 12. This Court has jurisdiction over this matter because the property damage, defective
17 work occurred and the contracts were entered into or were performed within the State of
18 Washington.

19 13. Venue is proper as the Developer Defendants transact business in and/or have their
20 principal place of business in and/or reside in King County, Washington.

21 **FIRST CLAIM - AGAINST THE DEVELOPER DEFENDANTS**

22 **FOR BREACH OF IMPLIED WARRANTY**

23 14. The Association incorporates herein by reference paragraphs 1 through 13, inclusive,
24 of this Complaint.

25 15. Pursuant to Section 64.34.445 of the Washington Condominium Act, the Developer
26 Defendants impliedly warranted that the units and common elements in the Project were suitable for
the ordinary uses of real estate of its type, and that the improvements made or contracted for by the

PLAINTIFF'S FIRST
AMENDED COMPLAINT- 4

Levin & Stein
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 521-8612
Fax (206) 521-8614

& Law Offices of James L. Strichartz
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 282-8020
Fax (206) 282-5041

1 Developer Defendants were free from defective materials and were constructed in accordance with
 2 sound engineering and construction standards, and in a workmanlike manner in compliance with
 3 the then applicable law.

4 16. The Developer Defendants breached their implied warranties in that there are a
 5 variety of building envelope, structural, fire-safety and architectural defects and other defects or
 6 deficiencies in Meadow Valley's building components and/or their installation, which include, but
 7 are not limited to, the defects described in Pacific Engineering Technologies' report dated September
 8 3, 2003, and entitled, "Building Envelope Investigation Meadow Valley Condominiums"; Studio
 9 Meng Strazzara's interior architectural report dated September 3, 2003, and entitled, "Preliminary
 10 Bullet-Point Report"; Pacific Engineering Technologies' report dated October 2, 2003, and entitled,
 11 "Supplemental Review of Sheathing of Endwall Roof Trusses Meadow Valley Condominiums"; and
 12 Studio Meng Strazzara's interior architectural report dated October 6, 2003, and entitled,
 13 "Architectural Investigation Report"; the Summary of Meadow Valley homeowners' responses to
 14 a construction defect survey; and the Summary of Meadow Valley homeowners' comments in
 15 response to a construction defect survey, all of which have previously been provided to the above-
 16 named Defendants.

17 In addition, the Association is informed and believes, and on that basis alleges, that there are
 18 other elements of the Project which are defective or defectively designed and/or installed and which
 19 may be revealed as a result of additional investigation. .

20 17. As a consequence of the defects described above and in the above-referenced reports
 21 and summaries, there has been water intrusion into and through the building envelope, exterior and
 22 interior building surfaces have deteriorated prematurely, and various building components and other
 23 property have been physically damaged, and their useful lives shortened.

24 18. As a direct and proximate result of the Developer Defendants' conduct, the
 25 Association and its unit owners have been damaged in an amount to be proven at trial. Such damages
 26 include, among other things, the cost of repairing the damage to the Project caused by the defective
 design, workmanship and materials, the cost of correcting defective conditions, including

1 investigative costs and repair scope development costs, and the loss of use of the units and common
2 areas, and loss of marketability of the units.

3 19. Pursuant to RCW 64.34.455, and pursuant to the sales agreement used by the
4 Developer Defendants, the Association is entitled to its reasonable attorneys' fees incurred in
5 prosecuting this action.

6 **SECOND CLAIM - AGAINST THE DEVELOPER DEFENDANTS**

7 **FOR BREACH OF IMPLIED WARRANTY OF HABITABILITY**

8 20. The Association incorporates herein by reference paragraphs 1 through 19, inclusive,
9 of this Complaint.

10 21. Under Washington law, the Developer Defendants impliedly warranted that the units
11 and the common elements of the Project were habitable.

12 22. The Developer Defendants breached this implied warranty of habitability in that the
13 defects set forth above in Paragraph 16 and in the reports and summaries referenced therein are
14 serious and substantial, and severely restrict the habitability of the units in the Project.

15 23. As a direct and proximate result of the Developer Defendants' conduct, the
16 Association and its unit owners have been damaged in an amount to be proven at trial. Such damages
17 include, among other things, the cost of repairing the damage to the Project caused by the defective
18 design, workmanship and materials, the cost of correcting defective conditions, including
19 investigative costs and repair scope development costs, and the loss of use and marketability of the
20 units.

21 24. Pursuant to the Sales Agreement used by the Developer Defendants, the Association
22 is entitled to its reasonable attorneys' fees incurred in prosecuting this action.

23 **THIRD CLAIM - AGAINST DOES 26 THROUGH 50**

24 **FOR BREACH OF EXPRESS WARRANTY AND CONTRACT**

25 25. The Association incorporates herein by reference paragraphs 1 through 24, inclusive,
26 of this Complaint.

26 26. Does 26 through 50 are believed to have supplied, installed and/or constructed

PLAINTIFF'S FIRST
AMENDED COMPLAINT- 6

Levin & Stein
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 521-8612
Fax (206) 521-8614

& Law Offices of James L. Strichartz
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 282-8020
Fax (206) 282-5041

1 portions of the Project. Does 26 through 50 are believed to have warranted in writing their work to
2 be free from defects.

3 27. The Association is either the assignee of the warranties made by Does 26 through 50,
4 or the Association is a third party beneficiary of the warranties made by Does 26 through 50 and of
5 the contracts pursuant to which Does 26 through 50 performed their work at the Project.

6 28. As set forth above, Does 26 through 50 have breached their contracts and warranties.
7 As a direct and proximate result of Does 26 through 50's conduct, the Association and its unit owners
8 have been damaged in an amount to be proven at trial. Such damages, include, among other things,
9 the cost of repairing the damage to the property caused by the defective design workmanship, the
10 cost of correcting defective conditions, including investigative costs and repair scope development
11 costs, and the loss of use and marketability of the units.

12 **FOURTH CLAIM - AGAINST DEVELOPER DEFENDANTS FOR**
13 **VIOLATION OF THE UNIFORM FRAUDULENT TRANSFER ACT**

14 29. The Association incorporates herein by reference paragraphs 1 through 28, inclusive,
15 of this Complaint.

16 30. The Association is informed and believes, and on that basis alleges, that the
17 Developer Defendants have engaged in fraudulent conveyances within the meaning of the Uniform
18 Fraudulent Transfer Act in that they have transferred assets from the Meadow Valley, L.L.C. to
19 Hebert, the Members and/or to Does 11 through 25:

- 20 a. With actual intent to hinder, delay, or defraud their creditors; or
21 b. Without receiving a reasonably equivalent value in exchange for the transfer
22 or obligation, and Meadow Valley, L.L.C.: (i) Was engaged or was about to engage in a business
23 or a transaction for which the remaining assets of Meadow Valley, L.L.C. were unreasonably small
24 in relation to the business or transaction; or (ii) Intended to incur, or believed or reasonably should
25 have believed that Meadow Valley, L.L.C. would incur, debts beyond its ability to pay as they
26 became due; or
c. The transfers were made or the obligations were incurred without receiving

PLAINTIFF'S FIRST
AMENDED COMPLAINT- 7

Levin & Stein
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 521-8612
Fax (206) 521-8614

& Law Offices of James L. Strichartz
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 282-8020
Fax (206) 282-5041

1 a reasonably equivalent value in exchange for the transfer or obligation and Meadow Valley, L.L.C.
2 was insolvent at that time or Meadow Valley, L.L.C. became insolvent as a result of the transfer or
3 obligation; or

4 d. The transfer was made to an insider (as defined in the Uniform Fraudulent
5 Transfer Act) for an antecedent debt, Meadow Valley, L.L.C. was insolvent at that time, and the
6 insider had reasonable cause to believe that Meadow Valley, L.L.C. was insolvent.

7 31. As a result of the fraudulent conveyance, the Association is entitled to all of the
8 remedies set forth in RCW 19.40.071 and 19.40.081, including but not limited to:

9 a. Avoidance of the transfer or obligation to the extent necessary to satisfy the
10 Association's claim; and

11 b. An injunction against further disposition by Meadow Valley, L.L.C. and/or
12 the remaining Developer Defendants of the assets transferred or of other property.

13 **FIFTH CLAIM - AGAINST THE DEVELOPER DEFENDANTS**

14 **TO SET ASIDE IMPROPER DISTRIBUTIONS**

15 32. The Association incorporates herein by reference paragraphs 1 through 31, inclusive,
16 of this Complaint.

17 33. The Association is informed and believes, and on that basis alleges, that Meadow
18 Valley, L.L.C. has made distributions to its members in violation of RCW 25.15.235 in that, after
19 giving effect to the distribution, Meadow Valley, L.L.C. cannot pay its debts as they become due in
20 the usual course of business, or all liabilities of Meadow Valley, L.L.C., other than liabilities to
21 members on account of their limited liability company interests and liabilities for which the recourse
22 of creditors is limited to specified property of Meadow Valley, L.L.C., exceed the fair market value
23 of the assets of Meadow Valley, L.L.C.

24 34. The Association is informed and believes, and on that basis alleges, that the
25 remaining Developer Defendants and each of them, knew at the time the distribution was made to
26 them that the distribution violated RCW 25.15.235(1).

35. The Association is a creditor of the Meadow Valley, L.L.C. and asserts this claim in

PLAINTIFF'S FIRST
AMENDED COMPLAINT- 8

Levin & Stein
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 521-8612
Fax (206) 521-8614

& Law Offices of James L. Strichartz
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 282-8020
Fax (206) 282-5041

1 the name of Meadow Valley, L.L.C. to recover all assets of Meadow Valley, L.L.C. distributed to
 2 the remaining Developer Defendants in violation of RCW 25.15.235.

3 **SIXTH CLAIM -- AGAINST THE DEVELOPER DEFENDANTS**

4 **FOR BREACH OF FIDUCIARY DUTY**

5 36. The Association incorporates herein by reference paragraphs 1 through 35, inclusive,
 6 of this Complaint.

7 37. Pursuant to the Declaration and the Washington Condominium Act, the Association
 8 has the responsibility to maintain, repair and replace the common elements and the duty to repair,
 9 replace and restore damage to the Project.

10 38. For a period of time the Developer Defendants controlled the Association and,
 11 therefore, had the duty to cause the Association to act in a reasonable and prudent manner and in the
 12 best interests of the Association and the unit owners. The Association is informed and believes, and
 13 on that basis alleges, that the Developer Defendants breached their fiduciary duty by acts or
 14 omissions, including, but not limited to, the following: a) failing to disclose the existence of defects
 15 within the Project to the Association; b) failing to cause Meadow Valley, L.L.C. to correct these
 16 defects to the Project or to fund the cost of the repair and remediation; c) making a series of improper
 17 distributions to the detriment of the Association or otherwise draining the assets from the Meadow
 18 Valley, L.L.C.; d) failing to disclose to the Association such distributions or plan to make such
 19 distributions or to drain the assets from Meadow Valley, L.L.C.; e) failing to provide adequate
 20 reserves in the Association's budget for the correction of defective conditions and the repair and/or
 21 replacement of the defective portions of the Project; f) failing to comply with RCW 64.34.312; and
 22 g) failing to pay assessments for declarant-owned units to the Association.

23 39. As a direct and proximate result of the Developer Defendants' conduct, the
 24 Association has been damaged in an amount to be proven at trial. Such damages include, among
 25 other things, the cost of correcting the defective conditions and/or repairing the damage to the Project
 26 caused by the defective design workmanship and materials, including investigative costs and repair
 scope development costs, and the loss of use and marketability of the units.

PLAINTIFF'S FIRST
 AMENDED COMPLAINT- 9

Levin & Stein
 200 W. Mercer Street, Suite 511
 Seattle, Washington 98119
 Telephone (206) 521-8612
 Fax (206) 521-8614

& Law Offices of James L. Strichartz
 200 W. Mercer Street, Suite 511
 Seattle, Washington 98119
 Telephone (206) 282-8020
 Fax (206) 282-5041

40. Pursuant to RCW 64.34.455, and pursuant to Developer Defendants' sales agreement, the Association is entitled to its reasonable attorneys' fees incurred in prosecuting this action.

SEVENTH CLAIM AGAINST THE DEVELOPER DEFENDANTS
FOR VIOLATION OF THE CONSUMER PROTECTION ACT

41. The Association incorporates herein by reference paragraphs 1 through 40, inclusive, of this Complaint.

42. The Association is informed and believes, and on that basis alleges, that the Developer Defendants made a series of distributions or other transfers to its members or others to the detriment of Developer Defendants' creditors and purchasers of Project units; failed to disclose such distributions or plan to make such distributions to creditors or purchasers of Project units; and failed to disclose the existence of defects within the Project while the units were being marketed and sold, which had the capacity to deceive members of the public at large.

43. As a direct and proximate result of the Developer Defendants' conduct, the Association and individual unit purchasers have been damaged in an amount to be proven at trial. Such damages include, among other things, the cost of repairing the defects that exist at Project and the damage caused by the defective workmanship and materials and related costs, the cost of correcting defective conditions and related costs, including investigative costs and repair scope development costs, the loss of use and marketability of the units, and the difference between the value of the units as represented by Developer Defendants, and the actual value of the units.

44. Pursuant to RCW 19.86.090, the Association and each of the purchasers of units from the Developer Defendants are entitled to recover their actual damages, attorneys' fees and costs, as well as treble damages not exceeding \$10,000 per violation.

EIGHTH CLAIM - AGAINST THE DEVELOPER DEFENDANTS
INJUNCTIVE RELIEF RE: TURNOVER AND DELIVERY
OF RCW 64.34.312(1) DOCUMENTS AND FOR DAMAGES

45. The Association incorporates herein by reference paragraphs 1 through 44, inclusive,

1 of this Complaint.

2 46. More than sixty days have elapsed since the Developer Defendants terminated
3 declarant control of the Association.

4 47. More than sixty days have elapsed since the date of the first conveyance of any unit
5 in the Project by the Developer Defendants.

6 48. The Association has made demands upon the known Developer Defendants for
7 turnover and delivery of all documents, books and records specified in RCW 64.34.312(1),
8 incorporated herein by reference.

9 49. Despite due demand having been made by the Association on several occasions, and
10 acknowledgments thereof by the Developer Defendants, said Defendants have failed to turnover and
11 deliver to the Association the following documents, books and records:

12 (a) The minute books, including all minutes, and other books and records of the Association,
13 as required under RCW 64.34.312(1)(d). While the Association did receive copies of meeting
14 minutes from July 2001, inclusive, onward, it has not received any of the other documentation
15 required to be provided to the Association under RCW 64.34.312(1)(d).

16 (b) The financial records, including canceled checks, bank statements, and financial
17 statements of the Association, and source documents from the time of the incorporation of the
18 Association through the date of transfer of declarant control to the unit owners, as required under
19 RCW 64.34.312(1)(g). Although the Association received copies of Financial Statements for
20 December 2001, January 2002 and February 2002, and 2000 and 2001 nominal budgets, it has not
21 received any of the other documentation required under this subsection.

22 (c) Except for alterations to a unit done by a unit owner other than the declarant, a copy of
23 the declarant's plans and specifications utilized in the construction or remodeling of the
24 condominium, with a certificate of the declarant or a licensed architect or engineer that the plans and
25 specifications represent, to the best of their knowledge and belief, the actual plans and specifications
26 utilized by the declarant in the construction or remodeling of the condominium, as required under

1 RCW 64.34.312(1)(j).

2 (d) Copies of any certificates of occupancy that may have been issued for the condominium;
3 as required under RCW 64.34.312(1)(l).

4 (e) All written warranties that are still in effect for the common elements, or any other areas
5 or facilities which the association has the responsibility to maintain and repair, from the contractor,
6 subcontractors, suppliers, and manufacturers and all owners' manuals or instructions furnished to the
7 declarant with respect to installed equipment or building systems; as required under RCW
8 64.34.312(1)(n).

9 50. In furtherance of obtaining the benefits accorded the Association under RCW
10 64.34.312(1), the Association is entitled to an order compelling the Developer Defendants to
11 turnover and deliver the Paragraph (49) documents, books and records. The Association is entitled
12 to a Permanent Injunction under Chapter 7.40 RCW, either under judgment or pre-judgment order,
13 ordering the Developer Defendants to turnover and deliver the Paragraph (49) documents, books and
14 records. The Association is entitled to enforce said Permanent Injunction through the contempt
15 proceedings provided under RCW 7.40.150 and Chapter 7.21 RCW.

16 51. As a direct and proximate result of the Developer Defendants' conduct as alleged in
17 Paragraphs (45) through (49) herein, the Association and individual unit purchasers have been
18 damaged in an amount to be proven at trial. Such damages include, but are not limited to, the costs
19 and attorneys' fees incurred in attempting to obtain the Developer Defendants' compliance with
20 RCW 64.34.312(1) prior to instituting this litigation, and the costs and attorneys' fees incurred in
21 searching for, locating and recreating from third party sources, as applicable, the subject documents,
22 books and records enumerated in Paragraph (49) herein should Developer Defendants fail to turnover
23 and deliver said documents, books and records.

24 52. In addition to the damages specified in Paragraph (51) herein, the Association is
25 entitled to an award of its attorneys' fees incurred in attempting to obtain the documents, books and
26

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AMENDED COMPLAINT- 12

Levin & Stein
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 521-8612
Fax (206) 521-8614

& Law Offices of James L. Strichartz
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 282-8020
Fax (206) 282-5041

1 records described in Paragraph (49) herein, as provided under RCW 64.34.455.

2 **NINTH CLAIM - AGAINST THE DEVELOPER DEFENDANTS**

3 **FOR COLLECTION OF DELINQUENT CONDOMINIUM ASSESSMENTS**

4 53. The Association incorporates herein by reference paragraphs 1 through 52,
5 inclusive, of this Complaint.
6

7 54. Developer Defendants, or one or some of them, were the legal owners of all units at
8 Meadow Valley Condominium prior to the first initial sale of any particular unit to a third party.

9 55. During their period of legal ownership of any one condominium unit, Developer
10 Defendants, or one or some of them, were, and are, obligated to pay a proportionate share of the
11 common expenses of the Project, levied as regular or special assessments by the Board against the
12 particular unit owned, pursuant to RCW 64.34.364(12) and the Declaration.

13 56. The first assessment made to any unit was March 1, 2000. Beginning on said date,
14 as provided under RCW 64.34.360(1), all units were required to be assessed, based on the budget
15 adopted by the Association.

16 57. The Association was under Declarant control (*i.e.*, Developer Defendants'
17 control) until June 2001.
18

19 58. The first non-Developer Defendants Board members were elected in June 2001.

20 59. Since the date of the first sale of any unit to a third party, the Developer Defendants,
21 or one or some of them, have, in incremental transactions over time, sold and conveyed their
22 interests in all of the remaining units at Meadow Valley Condominium to third parties.

23 60. The Association commissioned an independent auditor to conduct a routine audit and
24 investigation of the Developer Defendants' financial management of the Association during its
25 period of control, based on examination of various financial documents produced by the Developer
26 Defendants to the Association.

61. The audit referenced in Paragraph (60) herein was commissioned pursuant to RCW 64.34.312(2), which provides that the purpose of said audit shall be to, among other things, "determine if the declarant was charged for and paid the proper amount of assessments."

62. The audit referenced in Paragraph (60) concluded, and the Association hereby alleges, that from March 1, 2000 (the date of first assessment to any unit) through to the date of first sale of each unit held by the Developer Defendants, or one of some of them, (Declarants), the Developer Defendants-controlled Board under-assessed the Developer Defendants, or one or some of them, owned units, by assessing based not on the budget purportedly in effect for years 2000 and 2001, but based on the Declarants' (Developer Defendants) actual operating costs.

63. The audit referenced in Paragraph (60) concluded, and the Association hereby alleges, that during the period of Developer Defendants control, there was no allocation of any assessment revenues towards any reserve fund for future major repairs and replacements, and the assessment revenue provided for in the budget actually prepared for years 2000 and 2001 by Developer Defendants was, in fact, less than the actual assessment revenue received.

64. As of the date of this Complaint, Developer Defendants are delinquent in the payment of the following amounts, being the aggregate of the difference between the amounts that should have been assessed against each Developer Defendants, or one of some of them, -owned unit during the period of Developer Defendants, or one or some of them, ownership and the amount actually paid by Developer Defendants, or one or some of them,:

(a) Total of unpaid monthly assessments for year 2000: \$58,009.89

(b). Total of unpaid monthly assessments for year 2001: \$20,549.30

65. Developer Defendants, or one or some of them, paid several items from its/their own funds that should have been included as part of the Association's budget during fiscal years 2000 and 2001, in the sum total of \$52,629.51.

66. After credit of the amounts advanced by Developer Defendants, or one or some of

1 them, referenced in Paragraph (65) herein (\$52,629.51) against the amounts owed the Association
 2 as referenced in Paragraph (64) herein \$78,559.19, the net total still owed the Association for unpaid
 3 assessments on Developer Defendants, or one or some of them, -owned units is \$25,929.68.

4 67. Despite due demand, Developer Defendants have failed and refused to pay the
 5 delinquent amounts due on their accounts as described in Paragraph (66) herein.

6 68. The Association is entitled to 12% prejudgment interest on the unpaid
 7 assessments described in Paragraph (64) herein.

8 69. The Association has been and will be required to incur attorney's fees and costs in
 9 collecting the delinquent assessments owed by Developer Defendants. Under the terms of the
 10 Declaration and RCW 64.34.364 and RCW 64.34.455, the Association is entitled to collect its costs,
 11 including reasonable attorney's fees.
 12

13 PRAYER FOR RELIEF

14 WHEREFORE, the Association prays for judgement as follows:

15 1. Against the Developer Defendants collectively, and each of them, for damages
 16 according to proof for:

- 17 a. Breach of implied warranties;
- 18 b. Breach of the implied warranty of habitability;
- 19 c. Breach of fiduciary duty;
- 20 d. Violation of the Consumer Protection Act, including the greater of treble
 21 damages or \$10,000 for each of the individual purchasers from the Developer
 22 Defendants of units in the condominium and the Association's attorneys' fees
 23 and costs;
- 24 e. Avoidance of all fraudulent transfers or obligation to the extent necessary to
 25
 26

1 satisfy the Association's claim;

2 f. An injunction against further disposition by the Developer Defendants of the
3 assets transferred or of other property;

4 g. For avoidance of all distributions that violate RCW 25.15.235;

5 h. Failure to turnover and deliver those documents, books and records required
6 under RCW 64.34.312(1);

7 i. Unpaid assessments in the amount of \$25,929.68;

8 j. Prejudgment interest at 12% per annum on the amounts due under Paragraph (64)
9 herein;

10 k. Costs and disbursements related to this action;

11 l. Interest on all amounts from and after the date of judgment at the legal rate; and

12 m. Attorneys' fees pursuant to the Declaration, RCW 64.34.364, RCW 64.34.455,
13 RCW 19.86.020 and pursuant to the sales agreements.

14
15 2. Against Does 25 through 50 for damages according to proof for:

16 a. Breach of their express warranties; and

17 b. Breach of their contracts.

18
19 3. For the issuance of a Permanent Injunction under judgment or pre-judgment order,
20 ordering the Developer Defendants to turnover and deliver the Paragraph (49) documents, books
21 and records.

22 4. For enforcement of the Court's Permanent Injunction order or judgment through
23 contempt proceedings provided for in RCW 7.40.150 and Chapter 7.21 RCW.

24 5. For such other and further relief as the Court may deem just and equitable.

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PLAINTIFF'S FIRST
AMENDED COMPLAINT- 16

Levin & Stein
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 521-8612
Fax (206) 521-8614

& Law Offices of James L. Strichartz
200 W. Mercer Street, Suite 511
Seattle, Washington 98119
Telephone (206) 282-8020
Fax (206) 282-5041

1 DATED this 12th day of December, 2003.

2 LEVIN & STEIN

LAW OFFICES OF JAMES L. STRICHARTZ

3
4
5 By: 

John C. Siegel, WSBA No. 29866

6 Richard H. Levin, WSBA No. 26673

7 Attorneys for the Association

By: 

James L. Strichartz, WSBA No. 8589

Mike Padilla, WSBA No. 26284

Attorneys for the Association

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PLAINTIFF'S FIRST
AMENDED COMPLAINT- 17

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